

REMARKS UNDER 37 CFR § 1.116

Formal Matters

Claims 1-2, 11, 13-30 and 44-48 are pending after entry of the amendments set forth herein.

Claims 2, 16-19, 21 and 23-30 are currently withdrawn from consideration.

Claims 1, 11, 13-15, 20, 22 and 44-45 were examined. Claims 1, 11, 13-15, 20, 22 and 44-45 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

Claim Rejected Under 35 U.S.C. Section 112, Second Paragraph

Claims 11, 13-15, 20, 22 and 45 were rejected under 35 U.S.C. Section 112, second paragraph as being indefinite.

The Examiner asserted that the terms “free end” and “free end portion” were used in claim 11 inconsistently. Accordingly, Applicants have amended claim 11 above to clarify this usage.

In view of the above amendment and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 11, 13-15, 20, 22 and 45 under 35 U.S.C. Section 112, second paragraph, as being no longer inappropriate.

Claims Rejected Under 35 U.S.C. Section 102(b) (Koros et al.)

Claims 1 and 44 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Koros et al., U.S. Patent No. 5,908,382.

Applicants respectfully traverse. Claim 1 has been amended above to further recite first and second side members interconnecting said upper and lower spreader portions at first and second end portions of said upper and lower spreader portions, respectively. Support for this amendment can be

found, for example, at paragraphs [0041] – [0045] of the specification and throughout the specification and drawings. It is respectfully submitted that Koros et al. clearly fails to disclose first and second side members as claimed.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1 and 44 under 35 U.S.C. Section 102(b) as being anticipated Koros et al., U.S. Patent No. 5,908,382, as being inappropriate.

Claims Rejected Under 35 U.S.C. Section 102(b) (Santilli et al.)

Claims 11, 13-15, 20 and 45 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Santilli et al., U.S. Patent No. 6,099,468. The Examiner asserted that Santilli et al. disclose an upper spreader portion 46 and a lower spreader portion 82 being positioned relative to each other to produce a substernal space (Figs. 1-2). Applicants respectfully traverse. Applicants respectfully submit that Santilli et al. does not disclose “upper” and “lower” spreader portions 46 and 82, as 46 is a rod mounted to retractor arm 20, see column 3, line 32.

The Examiner further asserted that it would be possible to adjust the surface 82 to underlay the pair of “hooks” 78, 80 by adjusting bar portion 22 along bar 24 towards bar 20. Applicants respectfully submit that there is no disclosure provided by Santilli to support the Examiner’s conclusion. It appears that if one were to attempt to adjust the apparatus of Santilli as suggested by the Examiner, that the component 82 would interfere with the components 78, 80, not underlie them.

Further, claim 1 has been amended above to recite first and second side members interconnecting said upper and lower spreader portions at first and second end portions of said upper and lower spreader portions, respectively. Support for this amendment can be found, for example, at paragraphs [0041] – [0045] of the specification and throughout the specification and drawings. It is respectfully submitted that Santilli et al. clearly fails to disclose first and second side members as claimed.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 11, 13-15, 20 and 45 under 35 U.S.C. Section 102(b) as being anticipated by Santilli et al., U.S. Patent No. 6,099,468, as being inappropriate.

Claims Rejected Under 35 U.S.C. Section 103(a) (Santilli et al. in view of Jascalevich)

Claim 22 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Santilli et al.,

U.S. Patent No. 6,099,468, in view of Jascalevich, U.S. Patent No. 3,710,783. The Examiner admitted that the system of Santilli et al. does not include an upper spreader portion comprising a screw mechanism for lifting and retracting. The Examiner asserted that Jascalevich discloses a retractor rod D comprising outer threads for adjusting the rod through knob 62 as a retracting and lifting mechanism (Fig. 1) and that it would have been obvious to modify Santilli et al. to include this mechanism.

Applicants respectfully traverse. However, even if the modification proposed by the Examiner would have been obvious, which Applicants do not agree that it would have been obvious, the resultant combination would still fail to meet each and every recitation of claim 22, because claim 22 depends from claim 11 and Jascalevich fails to make up for the deficiencies of Santilli et al. in meeting all of the recitations of claim 11.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 22 under 35 U.S.C. Section 103(a) as being unpatentable over Santilli et al., U.S. Patent No. 6,099,468, in view of Jascalevich, U.S. Patent No. 3,710,783, as being inappropriate.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-036.

Respectfully submitted,
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